

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FULLTIME FANTASY SPORTS, LLC a  
Delaware limited liability company,

Plaintiff,

v.

STEVEN and JANE DOE RINDNER, and their  
marital community; MARK and JANE DOE  
STEIGLITZ, and their marital community;  
DOUG and JANE DOE SMITH, and their marital  
community; CRAIG and JANE DOE MALITZ,  
and their marital community; ROSS and JANE  
DOE LEVINSOHN, and their marital community;  
ROSS and JANE DOE LUKATSEVITCH, and  
their marital community; JOE and JANE DOE  
ROBINSON, and their marital community;  
TAMMER and JANE DOE FAHMY, and their  
marital community; MAYO and JANE DOE  
STUNTZ, and their marital community; JAMES  
and JANE DOE HECKMAN, and their marital  
community, PAUL and JANE DOE MCNICHOL,  
and their marital community thereof; ANDREW  
and JANE DOE RUSSELL, and their marital  
community thereof; HOWARD and JANE DOE  
LIPSON, and their marital community thereof,  
PILOT GROUP, GP, LLC, a Delaware  
corporation; and JANE and JOHN DOES 1  
through 8,

Defendants.

NO. 2:17-cv-00920-JLR

**SECOND AMENDED  
COMPLAINT**

///



1 Fulltime Fantasy Sports, LLC (“Fulltime”) makes the following allegations on  
2 information and belief, except for those allegations involving Fulltime, which are made on the  
3 basis of personal knowledge:

4 **PARTIES**

5 1. Fulltime Fantasy Sports, LLC is a Delaware limited liability company.

6 2. Defendant James Heckman was a member of Board of Directors and the Chief  
7 Executive Officer of Scout Media Holdings, Inc. (“Scout”) at all times relevant to this lawsuit.  
8 To the extent Heckman and Jane Doe Heckman form a marital community, the acts of Heckman  
9 were done on behalf and in furtherance of their marital community.

10 3. Defendant Paul McNichol was the Executive Vice President and a member of  
11 the Board of Directors of Scout during all times relevant to this lawsuit. To the extent McNichol  
12 and Jane Doe McNichol form a marital community, the acts of McNichol were done on behalf  
13 and in furtherance of their marital community.

14 4. Defendant Mark Stieglitz was the Chief Financial Officer of Scout from at least  
15 2014 until mid-2015. To the extent Stieglitz and Jane Doe Stieglitz form a martial community,  
16 the acts of Stieglitz were done on behalf and in furtherance of their marital community.

17 5. Defendant Doug Smith was the Chief Financial Officer of Scout beginning in  
18 mid-2015, following Defendant Stieglitz. To the extent Smith and Jane Doe Smith form a  
19 martial community, the acts of Smith were done on behalf and in furtherance of their marital  
20 community.

21 6. Defendant Ross Levinsohn was a member and at times relevant hereto was the  
22 President of the Board of Directors of Scout and Scout’s Executive Chairman (an officer  
23 position with operational responsibilities). To the extent Levinsohn and Jane Doe Levinsohn  
form a marital community, the acts of Levinsohn were done on behalf and in furtherance of  
their marital community.

7. Defendant Craig Malitz was a member of the Board of Directors of Scout

1 beginning in 2015. To the extent Malitz and Jane Doe Malitz form a marital community, the  
2 acts of Malitz were done on behalf and in furtherance of their marital community.

3 8. Defendant Ross Lukatsevitch was a member of the Board of Directors of Scout  
4 beginning in 2014 or earlier. To the extent Lukatsevitch and Jane Doe Lukatsevitch form a  
5 marital community, the acts of Lukatsevitch were done on behalf and in furtherance of their  
6 marital community.

7 9. Defendant Tammer Fahmy was a member of the Board of Directors of Scout  
8 beginning in 2015. To the extent Fahmy and Jane Doe Fahmy form a marital community, the  
9 acts of Fahmy were done on behalf and in furtherance of their marital community.

10 10. Defendant Joe Robinson was a member of the Board of Directors of Scout  
11 beginning in 2015. To the extent Robinson and Jane Doe Robinson form a marital community,  
12 the acts of Robinson were done on behalf and in furtherance of their marital community.

13 11. Defendant Mayo Stuntz was a member of the Board of Directors of Scout  
14 beginning in 2014 or earlier until approximately the end of 2014 and was the Chairman of the  
15 Board of Directors prior to Levinsohn. To the extent Stuntz and Jane Doe Stuntz form a marital  
16 community, the acts of Stuntz were done on behalf and in furtherance of their marital  
17 community.

18 12. Defendant Andrew Russell was a member of the Board of Directors of Scout  
19 beginning in 2014 or earlier until approximately the end of 2014. To the extent Russell and  
20 Jane Doe Russell form a marital community, the acts of Russell were done on behalf and in  
21 furtherance of their marital community.

22 13. Defendant Howard Lipson was a member of the Board of Directors of Scout  
23 beginning in 2014 or earlier. To the extent Lipson and Jane Doe Lipson form a marital  
community, the acts of Lipson were done on behalf and in furtherance of their marital  
community.

14. Jane and John Does 1 through 8 are officers, agents, and control persons of Scout



1 who haven't yet been determined or discovered (collectively, Smith, Stieglitz, Levinsohn,  
2 Malitz, Lukatsevitch, Fahmy, Robinson, Stuntz, Heckman, McNichol, Russell, Lipson, and  
3 Jane and John Does will be referred to as "Defendants").

#### 4 **VENUE AND JURISDICTION**

5 15. Venue and jurisdiction over the parties and subject matter are proper in the King  
6 County Superior Court pursuant to RCW 2.08.010 and 4.12.025. Venue and jurisdiction are  
7 proper in the U.S. District Court, Western District of Washington pursuant to 28 U.S.C. §1331.  
8 There are additional facts to those below that establish jurisdiction and venue is appropriate in  
9 this Court:

- 10 • Scout Media, Inc. (a wholly owned subsidiary of Scout Media Holdings, Inc. that  
11 employed Fulltime's owners after the APA, defined below) is a Washington  
12 corporation;
- 13 • Scout, for which all of the defendants were officers or directors, operated a Seattle  
14 office;
- 15 • Scout was originally founded in Seattle;
- 16 • The APA, as defined below, was executed by Fulltime in Seattle and the APA  
17 transaction was scheduled to close at Scout's counsel's offices in Seattle;
- 18 • Both Scout and Fulltime retained Seattle counsel to negotiate and draft the APA and  
19 related agreements;
- 20 • The Fulltime employees that became Scout employees as part of the APA were  
21 specifically identified as working in the Seattle office;
- 22 • The Fantasy Sports Division of Scout – for which the assets of Fulltime were  
23 transferred in the APA – were primarily used and managed out of the Seattle office;
- Many of the misrepresentations that are the subject of this lawsuit originated or were  
received in Seattle.

#### 21 **FACTS**

##### 22 **A. Certain defendants misrepresent Scout's financial health and stability to negotiate 23 Scout's purchase of Fulltime, concealing Scout's financial crisis**

16. Fulltime is a business that offers various products and services to fantasy sports



1 participants and enthusiasts. Fulltime facilitates dozens of fantasy sport leagues online and hosts  
2 in-person fantasy sports events that are attended by its thousands of members. Fulltime's  
3 primary fantasy event is the Fantasy Football World Championships which is an annual 5-day  
4 event in Las Vegas (the "Main Event").

5 17. Scout is a now-bankrupt business that provided news and information to  
6 followers across the United States in a variety of different categories (sports, home, recreation).  
7 Scout was originally incorporated under the name North American Membership Group, Inc.  
8 ("NAMG"), and its name was changed to "Scout Media Holdings, Inc." in 2015. For clarity,  
9 the name "Scout" is used throughout this complaint, even before the name change formally  
10 occurred.

11 18. In spring of 2014, defendant Heckman approached Fulltime on behalf of Scout  
12 and proposed to begin negotiations regarding Scout acquiring Fulltime. Scout did not have a  
13 significant presence in the Fantasy sports arena and acquiring Fulltime would immediately fill  
14 this void.

15 19. Heckman proposed to structure the transaction so that the consideration  
16 provided to Fulltime was comprised entirely of equity in Scout, which would allow Scout's  
17 cash that otherwise would have been spent on acquiring Fulltime to instead be used to acquire  
18 other fantasy sports companies. The acquiring of the other companies with Scout's cash would  
19 allow there to be more revenue under the Scout Fantasy umbrella. Heckman suggested that  
20 Fulltime's principals, Ian Ritchie and Scott Atkins, could stay on as employees of Scout and be  
21 paid substantial bonuses that were upwards of \$500,000 per year.

22 20. In reality, the true reason that Heckman wanted to structure the deal as a stock  
23 exchange was to obtain an influx of cash from Fulltime without expending any cash, as detailed  
below. He knew that Scout did not have the cash to afford Fulltime or to pay the bonuses.

21 21. In the course of negotiations from spring 2014 until December 2014, defendants  
22 Heckman and Stieglitz represented to Fulltime in multiple oral conversations that Scout was a  
23



1 financially healthy business. They also told Fulltime that Scout had a valuation of between  
2 \$150-200 million.

3 22. Defendants Heckman and Stieglitz also represented to Fulltime that Scout was  
4 a stable company with a long-term strategy and ability to grow and diversify in the industry.

5 23. In reliance on these representations, Scout and Fulltime entered into a Term  
6 Sheet in May 2014 under which the parties were required to negotiate in good faith towards a  
7 final agreement under which Scout would purchase Fulltime. The parties agreed that they  
8 would value Scout's business and Fulltime's business to determine what percentage of Scout's  
equity would be provided to Fulltime in exchange for Fulltime's assets.

9 24. To justify a valuation, defendant Heckman or Stieglitz provided Fulltime with a  
10 year-end 2013 consolidated financial statement for Scout. The financial statement identified  
11 over \$7.5 million in cash reserves.

12 25. These financial statements revealed the importance of Scout's legacy magazine  
13 and continuity business, which was its major cash generator. The legacy magazine and  
14 continuity business involved sending products to customers on a set schedule and charging  
15 customers on pre-obtained credit cards or otherwise billing the customers for the delivered  
product.

16 26. Based on the representations of Heckman and Stieglitz about Scout's financial  
17 health and stability, Fulltime began to integrate its operations into Scout's operations. Fulltime  
18 gave Scout control over its bank accounts and Paypal accounts, which contained about  
\$900,000, and began branding itself as "Scout Fantasy."

19 27. Relying on Heckman and Stieglitz's representations that Scout had cash to spend  
20 to acquire companies, Ritchie and Atkins set up multiple meetings with fantasy sports  
21 companies and high-profile individuals in the fantasy business to discuss them joining or being  
22 purchased by Scout. Ritchie and Atkins communicated with Rotowire, Fantasy Pros, Pro  
23 Football Focus, Mathew Berry from ESPN, and Evan Silva from Rotoworld.



1           28.     At or around the same time that Scout was representing itself to Fulltime as a  
2 financially healthy, stable business and negotiating toward a final agreement, Scout had actually  
3 decided to drastically change its business model and was experiencing an acute cash shortage.

4           29.     Scout's officers and directors, including defendants Stieglitz, Levinsohn,  
5 Lukatsevitch, Stuntz, Heckman, McNichol, Russell, and Lipson, made the decision to become  
6 a predominantly digital company, and therefore to (1) shut down Scout's legacy magazine  
7 business that had been responsible for the vast majority of Scout's historical revenue; and, (2)  
8 phase out its Minnesota Scout office and its Commerce Back Office ("CBO") operations that  
9 were responsible for all billing and client relationship management.

10          30.     Neither of these decisions, nor the disastrous impact of them, was disclosed to  
11 Fulltime.

12          31.     Scout's leadership recognized numerous red flags that Scout was prematurely  
13 executing on the vision to transition to a digital company. For example, in an email to Heckman,  
14 Stieglitz stated: "[J]ust scared to broadly cut in MN before we know CBO is working. [T]his  
15 is our revenue stream and if it breaks we don't know who we will need to fix it fast or patch  
16 until it is fixed." Stieglitz's email was in response to Heckman appealing to Stieglitz to find  
17 more employees from the Minnesota office to terminate. Stieglitz reiterated his concerns more  
18 than once.

19          32.     Despite the warnings, Scout terminated the majority of its Minnesota employees  
20 in an effort to preserve its working capital and avoid a default with its lender, Multiplier Capital.  
21 Multiplier's loan to Scout contained a covenant that required Scout to maintain at least \$1  
22 million in cash reserves.

23          33.     The termination of the Minnesota employees resulted in a complete shutdown  
of the CBO system. The shutting down of the CBO system was calamitous. Once the system  
was shut down, Scout had no way to bill customers and more importantly no way to send  
products to its continuity customers.



1           34. Defendant Stieglitz again sounded the alarm to defendant Heckman calling the  
2 billing situation a “disaster” and stating “right now we are unable to bill about \$600K a week.”

3           35. The CBO failure and lost revenue pushed Scout to the brink of financial despair  
4 and of default of the covenants to its lender. The near default was identified in an email string  
5 titled “NAMG Confidential” that circulated amongst Scout executives and disclosed that Scout  
6 had only \$1.2 million in cash reserves by July 2014.

7           36. In a July 11, 2014 email from defendant Heckman to Scout’s Senior Vice  
8 President of Marketing, Freddie Laker, which copied defendant Stieglitz, Heckman admitted  
9 catastrophic financial problems at Scout: **“Were you aware our sales dropped from 1.5MM  
10 in continuity to \$23,000?...literally, we’ve lost \$3MM in cash since May[.]”** (Emphasis in  
11 original).

12           37. Scout never disclosed to Fulltime that its cash balances had dropped over \$6  
13 million in under half a year. In fact, Scout was actively seeking to conceal its true financial  
14 position and cash situation from Fulltime.

15           38. In an email from Heckman to Scout executives/employees, including Stieglitz,  
16 Heckman explained how he wanted information conveyed to potential investors and stated, **“I  
17 want nobody to understand our cash position.”** He asked that investors such as Fulltime be  
18 told that he was out getting cash and that Scout had cash, despite neither being true.

19           39. Heckman continued the ruse to Fulltime that Scout’s cash situation was  
20 adequate, and in fact considerable. Heckman even asked one of Fulltime’s members, Ian  
21 Ritchie, to begin analyzing and meeting with other fantasy sports companies that Scout could  
22 acquire after it closed its transaction with Fulltime. Heckman indicated that Scout was fully  
23 on-board with a strategy of acquiring additional fantasy sport events to advance Scout’s position  
in the fantasy arena. Ritchie met with multiple companies about acquisition while entirely in  
the dark that Scout was in a financial crisis and concerned about making payroll.

          40. While Scout was painting a rosy picture to Fulltime and had Fulltime believing





1 there was cash to spend, the infighting amongst Scout executives identified the real cash crisis  
2 and the fraud being perpetuated upon Fulltime. In an email from Laker to Heckman, Laker  
3 stated:

4 Simultaneously we're trying to conserve cash and turning off all our  
existing offers because we don't want to or can't afford to pay for them.

5 I have stressed multiple times that I would prefer to have had new  
6 initiatives in place before turning off our old reverse generating  
initiatives, but I've tried to support the company cash flow strategy.

7 Combined this with pulling the plug in our billing platform and then  
being disabled for two months and we're not looking pretty.

8 41. Laker recognized that Scout was misleading potential investors such as Fulltime  
9 when he directly stated to Heckman: **"We are not the Company that you're selling to people  
10 yet but we can by launch."**

11 42. Unbeknownst to Fulltime, Scout began using Fulltime's cash reserve to cover  
12 for its depleted cash situation. At the time Fulltime came under the Scout umbrella, it had  
13 approximately \$900,000 in its bank and PayPal accounts. Much of this money was generated  
14 from entry fees that fantasy sports participants paid to Fulltime to play in its fantasy sports  
15 tournaments, including the Main Event. An ever present issue was that these fantasy contests  
16 had guaranteed prizes that needed to be paid at the end of the contest, so for each dollar of  
revenue there was an associated liability that needed to be paid or set aside for future payment.

17 43. Throughout the 2014 year as the cash crisis got tighter, Scout ignored these  
18 obligations and used Fulltime's cash and revenue as a slush fund to make payroll, pay vendors,  
19 and other expenses wholly unrelated to the fantasy business.

20 44. As 2014 unfolded, Scout's position became more dire and it continued to  
21 conceal the truth from Fulltime, although the true situation was known to defendants Heckman  
and Stieglitz, and likely other defendants as well.

22 45. Scout's dire cash situation just continued to get worse as on August 7, 2014  
23 Stieglitz emailed Heckman stating:



1 Here's the current look at cash and critical payables. It shows we need  
2 the first million investment in the week of August 23 to stay above the  
Multiplier \$1MM floor through August.

3 46. Stieglitz continued to sound the alarm and in response to Heckman stated:

4 If CBO was up today we would do that today with cash we have hoarded.  
But it isn't so I am hoarding cash in hopes I can pay the next payroll.

5 47. The August 2014 cash crisis resulted in Scout failing to make required lease  
6 payments and the Minnesota landlord threatening default.

7 48. The inability to bill customers because of CBO's failure lasted for over two  
8 months and resulted in millions of dollars in losses.

9 49. An additional issue caused by the CBO failure and closing of much of the  
10 Minnesota operation is that Scout had in excess of \$10M in product that was ready to ship that  
11 could not ship because of the broken CBO and client management system. It is estimated by  
Scout employees that this resulted in another \$7M in avoidable losses.

12 50. With its revenue stream broken by the CBO issues, Scout's only avenue to  
13 significant cash was to obtain an outside infusion of capital.

14 51. Because Scout had spent the entry fees for the 2014 Main Event on its operating  
15 expenses, it had to wait until additional revenues came in to pay the winners of the 2014 Main  
16 Event. Most of these revenues came in the form of investments that were solicited using the  
17 same misrepresentations and omissions that they used with Fulltime, as described in further  
detail below.

18 52. Scout sought and obtained investments from multiple high net worth individuals  
19 in the latter portion of 2014. Scout materially misrepresented its financials, value, revenue,  
20 cash position, and future potential to these potential investors, just as it did to Fulltime. Based  
on these misrepresentations, Scout was able to obtain investment capital.

21 53. Three of the high net worth individuals, Robert Hernreich and Ted and Joseph  
22 Serure, have filed a securities fraud lawsuit in the United States District Court for the Southern  
23 District of New York for the fraudulent statements and omissions that induced their investments



1 in Scout. *Hernreich v. Heckman*, Case No. 1:17-cv-06276.

2 54. Another investor was the Malitz Investment Group, whose principals are  
3 defendants Fahmy and Malitz. Fahmy and Malitz concede that Scout made material  
4 misrepresentations in the soliciting of that investment and they would not have made the  
5 investment had they known the true financial condition of Scout. However, soon after making  
6 the investment, Malitz and Fahmy discovered the truth when Scout spent significantly more of  
7 the Matlitz Investment Groups's money on existing debts than had been represented and agreed  
8 to. Matlitz and Fahmy nonetheless remained on the Board of Directors and became complicit  
9 in the misrepresentations and omissions in an effort to protect their investment.

10 55. Between beginning of negotiations regarding Scout's purchase of Fulltime and  
11 December 2014, no one at Scout disclosed to Fulltime (1) the dire cash situation, (2) the  
12 termination of the continuity and magazine businesses, (3) the significant decrease in revenue  
13 and profits, (4) the decrease in the potential value of Scout, and (5) that but for the fraudulently  
14 obtained infusion of capital that Scout was teetering on the edge of bankruptcy.

15 56. Scout's board of directors and certain officers during 2014, including defendants  
16 Stieglitz, Levinsohn, Lukatsevitch, Stuntz, Heckman, McNichol, Russell, and Lipson, were  
17 aware of and participated in the decision to end Scout's magazine and continuity business, the  
18 failed CBO transition, the resulting cash crisis, and the attempt to solve that crisis through  
19 outside investment. They also knew that these critical facts were not being disclosed to investors  
20 including Fulltime by Scout's officers.

21 57. In December 2014, Scout and Fulltime finally signed an Asset Purchase  
22 Agreement ("APA") in which Scout received certain assets of Fulltime in exchange for shares  
23 of Scout stock.

58. Fulltime's decision to continue allowing Scout to control its business prior to  
the APA, and its ultimate execution of the APA, were made in reliance on the  
misrepresentations and omissions set forth above, including that Scout was financially healthy



1 and stable.

2 59. The purchase price under the APA was even calculated on the basis of  
3 misrepresentations and omissions about Scout's current condition. Scout and Fulltime agreed  
4 that Fulltime was valued at between \$2,000,000 and \$2,500,000 and that Fulltime should  
5 receive a commensurate amount of equity in Scout. Fulltime agreed to accept a certain number  
6 of Scout shares that were allegedly worth that amount in reliance on a valuation that used  
7 Scout's 2013 revenue numbers, which did not take into account the shuttering of the magazine  
and continuity business and the resulting cash crisis.

8 60. Scout's board of directors and certain officers in 2014, including defendants  
9 Heckman, McNichol, Stieglitz, Levinsohn, Lukatsevitch, Stuntz, Russell, and Lipson, approved  
10 the purchase of Fulltime and the APA despite it being based on this fundamentally bogus  
11 valuation and despite the fact that Scout's true financial condition had never been revealed to  
Fulltime or its principals.

12 61. Scout recognized that this was a securities transaction subject to both the state  
13 and federal securities laws in a board consent that was completed commensurate with this  
14 transaction. The board consent directed Scout's attorneys to file a Notice of Exempt Offerings  
15 of Securities ("Form D") with the Securities and Exchange Commission. A Form D was never  
16 filed related to this transaction.

17 **B. Defendants continue to mislead Fulltime regarding when it would receive its shares  
of Scout stock, delaying Fulltime from discovering the fraud**

18 62. During 2015 and into 2016, after execution of the APA, Fulltime repeatedly  
19 asked Defendants to transfer the shares of Scout so that Fulltime could receive the agreed-upon  
20 consideration.

21 63. Defendants Heckman, Robinson, and Malitz falsely assured Fulltime that the  
22 transfer was imminent and that Fulltime's shareholders were listed on Scout's capitalization  
23 table. However, defendants never delivered the shares.



1           64.     When Fulltime continued to ask Defendants to transfer the shares, Defendants  
2 Heckman, Robinson, and Malitz said in conversations with Fulltime's principals that they  
3 would "make it right."

4           65.     These representations were false. Fulltime never received any Scout shares.  
5 Moreover, the defendants had solicited so many outside investments and Scout's prospects were  
6 so dim that the shares were essentially worthless, and Scout did not have cash to pay Fulltime  
7 or other investors. There was no way to "make it right."

8           66.     Fulltime relied on these misrepresentations and omissions by continuing to  
9 allow Fulltime to have control over its business assets, including its bank account, Paypal  
10 account, and its brand, during 2015 and 2016.

11           67.     A similar situation occurred with a company called Fanstar. Scout entered into  
12 a stock exchange agreement Fanstar under which Fanstar's key employees were promised  
13 employment and stock in Scout. Defendants never transferred stock to Fanstar.

14           68.     Scout also never paid the bonuses that Heckman had promised to Ritchie and  
15 Atkins during negotiations and that were required under Ritchie and Atkins' Employment  
16 Agreements they signed contemporaneously with the APA. That failure to pay wages is now  
17 the subject of a separate lawsuit filed by Atkins and Ritchie in King County Superior Court.

18           69.     Furthermore, Scout failed to pay multiple vendors for the 2014, 2015, and 2016  
19 Main Events, damaging the reputation of Fulltime and its principals in the industry.

20           **C. Fulltime discovers the fraud and spends substantial money to save the 2016 Main**  
21           **Event and mitigate its damages**

22           70.     In mid-2015, Scout's Board of Directors was investigating Heckman for his  
23 actions and had grown distrustful of him. While Heckman retained the CEO position, the Board  
reduced his control over Scout's finances and day-to-day business operations.

71.     Defendant Stieglitz also resigned as Chief Financial Officer by mid-2015, and  
the Board of Directors handpicked defendant Doug Smith to replace Stieglitz. From this time



1 forward the Scout Board of Directors had access to and/or control over all of Scout's day-to-  
2 day financial operations.

3 72. Thereafter, the Scout Board of Directors and the officers that it empowered had  
4 full control over all amounts that were generated by the Scout Fantasy business. In 2016, Scout  
5 Fantasy generated between \$1.8 million and \$2 million in registration fees for its fantasy sports  
6 competitions (these amounts include contestants' winnings from the 2015 season that the  
7 contestants rolled over for entry into 2016 contests).

8 73. The landscape in state regulation of fantasy sports contests also dramatically  
9 changed. There had been a few high profile fantasy sports competitions that had taken  
10 registration fees and held their competitions, but had spent the registration fees and were unable  
11 to pay amounts owed to their winners. Consistent with the movement toward protecting fantasy  
12 participants' prize funds, many states considered a legislative solution to fantasy companies  
13 failing to pay winners. New York (where Scout Holdings, Inc. and Scout Media, Inc. were  
14 headquartered until their bankruptcy and a state in which Scout Fantasy had numerous  
15 contestants for its competitions) passed regulations that required companies running fantasy  
16 contests to protect contestants' prize funds.

17 74. The fantasy sport industry, including the Fantasy Sports Trade Association, was  
18 pushing fantasy companies to segregate prize funds as part of the entry fees to ensure that the  
19 funds were available to pay participants. The movement in the industry was a recognition that  
20 the fantasy companies were holding the entry fees and prize fund in trust for the players, as  
21 anything else would be akin to a Ponzi scheme.

22 75. Nonetheless, the unacceptable practice of spending the players' entry fees on  
23 general operating expenses and paying the prize fund from future revenues or entry fees  
24 occurred at Scout again for the 2015 Main Event. Scout was late to pay many prize winners  
25 because it was waiting for the revenue to be available to pay.

26 76. At the behest of Fulltime members Ritchie and Atkins, Scout recognized its



1 obligation to protect the prize funds and in or around 2016 began placing registration fees in a  
2 prize fund account that segregated them from its general operating expenses.

3 77. Unfortunately, Scout's continued financial woes led to a judgment creditor  
4 garnishing approximately \$240,000 from the account.

5 78. However, as more states were considering and passing legislation related to  
6 fantasy sports and segregation of prize funds, Scout continued to recognize the prize fund as an  
issue it must resolve.

7 79. The Scout Board of Directors, led by Fahmy and Malitz, questioned Heckman  
8 and Smith about what the legal obligations were for Scout to segregate the prize funds in June  
9 2016. The officers and directors recognized that some duty existed but were seeking to  
10 understand the scope of that obligation.

11 80. Heckman in an email to Fahmy and Malitz (cc'ing Smith) told the board that  
12 based on pending regulations in New York State that they only needed to segregate registration  
13 fees from New York State participants. Heckman's analysis was nonsensical as segregating  
14 the entry fees from a limited number of New York State participants would do nothing to  
guarantee those participants were paid if they won a significant prize.

15 81. Heckman's statements to the board relating to the prize fund were made nearly  
16 a year after the board had limited Heckman's powers because they did not trust him and while  
17 they were investigating him for actions that would ultimately lead to the board determining he  
should be terminated with cause.

18 82. The New York statute required Scout to:

19 Ensure authorized players' funds are protected upon deposit and segregated  
20 from the operating funds of such operator or registrant and otherwise protected  
21 from corporate insolvency, financial risk, or criminal or civil actions against  
such operator and registrant[.]

22 N.Y. Rac. Pari-Mut. Wag. & Breed. Law §1404(1)(l) (McKinney).

23 83. The requirement of segregation applies to "operators," which is defined as "any  
person or entity that offers any interactive fantasy sports contest to any authorized player



1 through any interactive fantasy sports platform.” N.Y. Rac. Pari-Mut. Wag. & Breed. Law  
2 §1401 (McKinney). Scout was an operator under this definition.

3 84. Scout’s officers and Board of Directors were aware of the New York law and its  
4 applicability to their fantasy business.

5 85. They were also aware that they had an obligation to register as a fantasy sports  
6 “operator” under the law, but could not do so because they were nowhere near complying with  
7 the law’s prize fund requirements. Scout’s financial situation had them in a position where they  
8 could neither comply with the law by registering nor comply with the law by having a fully  
9 funded prize fund.

10 86. Despite the obligation to segregate and protect the contestants’ prize funds,  
11 Scout continued to commingle the contestants’ funds with its general operating account and  
12 spend the funds to pay its general obligations.

13 87. The defendant directors and officers during 2016 (all defendants except for  
14 Defendants Stieglitz, Russell, McNichol, Lipson and Stuntz) knew at the time they were  
15 commingling and spending the contestants’ funds that these acts violated the New York law,  
16 yet they persisted.

17 88. By the end of August 2016, Scout was facing bankruptcy and the prize fund was  
18 significantly depleted.

19 89. Scout Fantasy was scheduled to have the Main Event in Las Vegas, Nevada at  
20 the Tropicana Hotel from September 7 through 11, 2016. Hundreds of fantasy contestants were  
21 travelling to Las Vegas for the event and had booked rooms at the Tropicana. Thousands more  
22 were planning to draft their fantasy teams online during this period.

23 90. Days before the event, one of Fulltime’s principals, Ian Ritchie, learned that  
Scout had not and ultimately would not make a \$70,000.00 payment to the Tropicana Hotel that  
was required prior to the event. Ritchie then learned that the purportedly segregated prize fund  
account was lacking at least \$920,000.00 that it was required to contain per the New York law.





1           91.     The event would be canceled if the \$70,000.00 was not paid and Scout Fantasy  
2 would be in significant danger of administrative or civil action if the prize fund was not  
3 replenished with the \$920,000.00. If canceled, all of the fantasy contestants would demand  
4 immediate refunds totaling between \$1,800,000 and \$2,000,000—cash that Scout did not have.  
5 Fulltime would be forever tarnished as a fantasy business and would never again be able to  
6 attract customers to it content or its competitions. Further, Ritchie and Atkins, who had both  
7 worked hard to build substantial goodwill and a strong reputation in the fantasy sports industry,  
8 would have their business and their reputation substantially tarnished.

9           92.     Faced with this dim prospect, Ritchie believed that it was necessary to mitigate  
10 damages. He demanded that Scout rescind the APA and return Fulltime to its members (who  
11 had never received any Scout equity anyway) so that Fulltime could remedy the situation.

12           93.     Ritchie made clear in emails and conversations with Scout representatives,  
13 individually and through counsel, before and after the rescission, that Scout was obligated to  
14 re-pay Fulltime for the amount Scout spent from the prize fund.

15           94.     On September 1, 2016, Scout agreed to a Rescission Agreement and rescinded  
16 the APA.

17           95.     Fulltime subsequently paid the \$70,000.00 owed to the Tropicana and also  
18 replenished the prize fund with \$921,000.00 so that it was in compliance with New York law.  
19 The 2016 Main Event was held as scheduled.

20           96.     Though Scout agreed to rescission of the APA, Fulltime has not been made  
21 whole. Fulltime has never received any compensation for the \$991,000.00 that Fulltime had to  
22 spend to mitigate its damages and save the 2016 Main Event (\$921,000.00 on the prize fund  
23 and \$70,000.00 on the hotel), or the profits unjustly received from Fulltime's fantasy business  
between 2014 and 2016.

          97.     Scout has now entered bankruptcy proceedings in Southern District of New  
York.



**Primary Violation of Washington State Securities Act (“WSSA”), Chapter 21.20 RCW  
(Against Defendants Heckman, Stieglitz, Robinson, and Malitz)**

100. Defendants Heckman, Stieglitz, Robinson, and Malitz are sellers of securities under WSSA because they substantially contributed to the sale of Scout shares to Fulltime.

102. Defendants Heckman and Stieglitz further violated RCW 21.20.010 by omitting material facts in the sale of securities, including that (1) that Scout had lost over \$6 million in cash from the 2013 financial statement that was provided; (2) that Scout was at times insolvent; (3) that Scout was in a perilous financial position; (4) that Scout was shutting down its magazine and continuity businesses; and, (5) that Scout's termination of its Minnesota employees had led to massive issues with its CBO operations, including an over 2-month period during which Scout could neither send product to nor bill customers.

103. Fulltime relied on these material misrepresentations and omissions when it agreed to accept shares of Scout in exchange for ownership of Fulltime. Fulltime agreed to the transaction because its principals believed Scout was financially stable, had adequate cash reserves, had a steady stream of income from its magazine and continuity business, and had a

1 long-term plan for growth. Even the number of Scout shares that Fulltime was supposed to  
2 receive under the APA was derived from the fraudulent valuation.

3 104. After the APA was signed and the purchase of Scout stock was allegedly  
4 complete, Defendants Heckman, Robinson, and Malitz continued the fraud by materially  
5 misrepresenting to Fulltime that the transfer of Scout stock was imminent, that Fulltime's  
6 owners were listed on Scout's capitalization table, and that they would "make it right." These  
7 statements were false because the stock was never actually transferred and defendants knew  
8 that Scout's financial position was such that Fulltime could never receive stock with the value  
that had been promised.

9 105. Fulltime relied on these misrepresentations in continuing to allow Scout to  
10 control its business assets and await the transfer of its Scout shares, all while Scout was  
11 improperly using Fulltime's cash and revenue to fund operations for its business.

12 106. In addition to the primary violations set forth above of Heckman, Stieglitz,  
13 Robinson and Malitz, the above misrepresentations and omissions were made in those  
14 defendants' roles as officers and directors of Scout and therefore Scout, a non-party to this  
15 lawsuit, has violated RCW 21.20.010 and its primary violation may be the basis for secondary  
liability as set forth below.

16 107. Although Fulltime has tendered its shares of Scout stock and otherwise sought  
17 rescission, it has not been made whole and has suffered consequential damages as a result of  
18 the material misrepresentations and omissions of Defendants Heckman, Stieglitz, Robinson,  
19 and Malitz, including but not limited to the monies spent to replenish the prize fund and hold  
20 the 2016 Main Event at the Tropicana Hotel, the damage suffered to its reputation in the industry  
21 due to Scout's mismanagement, and the profits that Scout unjustly received when it had  
possession of Fulltime's business assets.

22 108. Fulltime is entitled to damages in an amount to be proven at trial, plus  
23 prejudgment interest of eight percent per annum, costs, and attorneys' fees. RCW 21.20.430(1).



**SECOND CAUSE OF ACTION**  
**Control Person Liability under WSSA**  
**(Against All Defendants)**

109. Fulltime realleges and incorporates the foregoing paragraphs as if fully set forth herein.

110. Defendants Heckman, McNichol, Stieglitz, Levinsohn, Lukasevitch, Stuntz, Russell, and Lipson were officers, directors, and/or control persons of Scout under RCW 21.20.430(3) during 2014 at some or all times between the beginning of negotiations for Scout's purchase of Fulltime and execution of the APA.

111. Defendants Heckman, McNichol, Stieglitz, Levinsohn, Lukasevitch, Stuntz, Russell, and Lipson were also control persons of Defendants Heckman and Stieglitz under RCW 21.20.430(3) during 2014 because they had authority to control their negotiations with Fulltime at some or all times between the beginning of negotiations for Scout's purchase of Fulltime and execution of the APA.

112. Defendants Heckman, Levinsohn, Stieglitz, Levinsohn, Lukasevitch, Malitz, Fahmy, Robinson, and Smith were officers, directors, and/or control persons of Scout under RCW 21.20.430(3) during 2015 and 2016, when Defendants Heckman, Robinson, and Malitz misrepresented to Fulltime that its shares of Scout stock had been transferred or were going to be transferred.

113. Defendants Heckman, Levinsohn, Stieglitz, Levinsohn, Lukasevitch, Malitz, Fahmy, Robinson, and Smith were also control persons of Defendants Heckman, Robinson, and Malitz under RCW 21.20.430(3) during 2015 and 2016, when Defendants Heckman, Robinson, and Malitz misrepresented to Fulltime that its shares of Scout stock had been transferred or were going to be transferred because they had the authority to control their statements to investors including Fulltime.

114. By virtue of their status as officers, directors, and/or control persons under RCW 21.20.430(3), all defendants are jointly and severally liable for the primary violations of WSSA

1 by Defendants Heckman, McNichol, Stieglitz, Malitz, Robinson, and non-party Scout set forth  
2 above.

### 3 **THIRD CAUSE OF ACTION**

#### 4 **Violation of Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.) 5 (“Exchange Act”) and Rule 10b-5 6 (Against Defendants Heckman, Stieglitz, Robinson, and Malitz)**

7 115. Plaintiffs reallege and incorporate the foregoing allegations as if fully set forth  
8 herein.

9 116. Defendants Heckman and Stieglitz made material misrepresentations in the sale  
10 of securities by representing to Plaintiff that Scout was worth between \$150 million and \$180  
11 million and that it was a stable company positioned for growth, in violation of Section 10(b)  
12 and Rule 10b-5.

13 117. Defendants Heckman and Stieglitz further violated Section 10(b) and Rule  
14 10b-5 by omitting material facts in the sale of securities, including that (1) that Scout had lost  
15 over \$6 million in cash from the 2013 financial statement that was provided; (2) that Scout was  
16 at times insolvent; (3) that Scout was in a perilous financial position; (4) that Scout was shutting  
17 down its magazine and continuity businesses; and, (5) that Scout’s termination of its Minnesota  
18 employees had led to massive issues with its CBO operations, including an over 2- month period  
19 during which Scout could neither send product to nor bill customers.

20 118. Defendants Heckman and Stieglitz knew these representations and omissions  
21 were false and misleading when they were made, or acted with reckless disregard for their  
22 falsity. Their scienter is evidenced by Heckman and Stieglitz’s emails discussing the enormity  
23 of Scout’s financial crisis and the intent not to let investors know, and an inference of scienter  
exists because as officers and directors, these defendants were making decisions about the core  
business issues, such as Scout’s legacy magazine and continuity business, cash reserves, and  
outside investment, that were misrepresented or not disclosed.

119. Fulltime relied on these material misrepresentations and omissions when it



1 agreed to accept shares of Scout in exchange for ownership of Fulltime. Fulltime agreed to the  
2 transaction because its principals believed Scout was financially stable, had adequate cash  
3 reserves, had a steady stream of income from its magazine and continuity business, and had a  
4 long-term plan for growth. Even the number of Scout shares that Fulltime was supposed to  
receive under the APA was derived from the fraudulent valuation.

5       120. After the APA was signed and the purchase of Scout stock was allegedly  
6 complete, Defendants Heckman, Robinson, and Malitz continued the fraud by materially  
7 misrepresenting to Fulltime that the transfer of Scout stock was imminent, that Fulltime's  
8 owners were listed on Scout's capitalization table, and that they would "make it right." These  
9 statements were false because the stock was never actually transferred and defendants knew  
10 that Scout's financial position was such that Fulltime could never receive stock with the value  
that had been promised.

11       121. Heckman, Robinson, and Malitz knew these statements were false or acted with  
12 reckless disregard to their falsity. Heckman's scienter is evidenced by the emails  
13 acknowledging the enormity of Scout's cash problem and admitting to try to hide it from  
14 investors. Malitz's and Robinson's scienter is evidenced by the fact that Heckman was under  
15 investigation by mid-2015, Stieglitz had resigned, and Malitz's admission that  
16 misrepresentations and omissions were made to him when he invested and that he discovered  
17 those misrepresentations and omissions shortly after joining the Board. Malitz and Robinson  
18 were aware that there was no way when the statements were made to provide Fulltime with the  
19 benefit of its bargain because Scout's financial woes were such that it would be impossible for  
Fulltime to receive much of anything in value from Scout.

20       122. Fulltime relied on these misrepresentations in continuing to allow Scout to  
21 control its business assets and await the transfer of its Scout shares, all while Scout was  
22 improperly using Fulltime's cash to fund operations for its business.

23       123. The misrepresentations and omissions of Defendants Heckman, Stieglitz,



1 Robinson, and Malitz were made in their roles as officers and directors of Scout and therefore  
 2 Scout, a non-party to this lawsuit, has violated Section 10(a) and Rule 10b-5 and this primary  
 3 violation may be the basis for secondary liability as set forth below.

4 124. Although Fulltime has tendered its shares of Scout stock and otherwise sought  
 5 rescission, it has not been made whole and has suffered consequential damages as a result of  
 6 the material misrepresentations and omissions of Defendants Heckman, Stieglitz, Robinson,  
 7 and Malitz, including but not limited to the monies spent to replenish the prize fund and hold  
 8 the 2016 Main Event at the Tropicana Hotel, the damage suffered to its reputation in the industry  
 9 due to Scout's mismanagement, and the profits that Scout unjustly received when it had  
 10 possession of Fulltime's business assets.

11 125. Fulltime is entitled to damages in an amount to be proven at trial, plus  
 12 prejudgment interest, costs, and attorneys' fees.

#### 13 **FOURTH CAUSE OF ACTION**

##### 14 **Violation of Section 20(a) of the Exchange Act (15 U.S.C. §78t)** 15 **(Against All Defendants)**

16 126. Fulltime realleges and incorporates the foregoing paragraphs as if fully set forth  
 17 herein.

18 127. Defendants Heckman, McNichol, Stieglitz, Levinsohn, Lukasevitch, Stuntz,  
 19 Russell, and Lipson were control persons of Scout and of Defendants Heckman and Stieglitz  
 20 during 2014 at some or all times between the beginning of negotiations regarding Scout's  
 21 purchase of Fulltime and execution of the APA. These defendants were aware of, had the power  
 22 to control, and actually did exercise control over decisions such as shutting down Scout's  
 23 magazine and continuity business, how to handle Scout's depleted cash reserves, and  
 solicitation of new investors such as Fulltime.

128. Defendants Heckman, Levinsohn, Stieglitz, Levinsohn, Lukasevitch, Malitz,  
 Fahmy, Robinson, and Smith were control persons of Scout and of Defendants Heckman,  
 Robinson, and Malitz during 2015 and 2016, when Defendants Heckman, Robinson, and Malitz



1 misrepresented to Fulltime that its shares of Scout stock had been or would be transferred. These  
 2 defendants were aware of and had the power to control Scout's disastrous financial state and  
 3 communications between Scout and its representatives, on one hand, and investors in the  
 4 company on the other.

5 129. By virtue of their status as control persons, all defendants are jointly and  
 6 severally liable for the primary violations of Section 10(b) and Rule 10b-5 by Defendants  
 Heckman, Stieglitz, Malitz, Robinson, and non-party Scout set forth above.

7 **FIFTH CAUSE OF ACTION**  
 8 **Violation of the Washington Consumer Protection Act**  
 9 **(Against All Defendants)**

10 130. Fulltime realleges and incorporates the foregoing paragraphs as if fully set forth  
 herein.

11 131. The actions of Defendants Heckman and Stieglitz in soliciting investment into  
 12 Scout without revealing its true financial condition, including the cash crisis it experienced in  
 13 2014, as detailed above, is an unfair or deceptive act or practice in the conduct of a trade or  
 commerce, in violation of RCW 19.86.020.

14 132. As corporate directors who participated in or knowingly approved of the conduct  
 15 of defendants Heckman and Stieglitz during 2014, defendants Levinsohn, Lukatsevich, Stuntz,  
 16 Russell, and Lipson are also subject to personal liability. *Grayson v. Nordic Const. Co., Inc.*,  
 17 92 Wn.2d 548, 554, 599 P.2d 1271 (1979).

18 133. Defendants Heckman, Robinson, and Malitz committed further unfair and  
 19 deceptive acts and practices in 2015 by materially misrepresenting to Fulltime that the transfer  
 20 of Scout stock was imminent, that Fulltime's owners were listed on Scout's capitalization table,  
 and that they would "make it right."

21 134. As corporate directors who participated or knowingly approved of the conduct  
 22 of defendants Heckman, Robinson, and Malitz during 2015, defendants Levinsohn,  
 23 Lukatsevich, Fahmy, Robinson, and Smith are also subject to personal liability. *Grayson v.*





1 *Nordic Const. Co., Inc.*, 92 Wn.2d 548, 554, 599 P.2d 1271 (1979).

2 135. This case affects the public interest because defendants injured other parties,  
3 including Robert Hernreich, Ted and Joseph Serure, the Malitz Investment Group, and Fanstar,  
4 in the same fashion as Plaintiff. *See Bavand v. OneWest Bank*, 196 Wn.App. 813, 385 P.3d 233  
5 (2016). Defendants actively solicited these outside investments and had unequal bargaining  
6 power because of their exclusive access to information about what was really happening at  
7 Scout.

8 136. The unfair and deceptive acts and practices of the Defendants set forth above  
9 caused injury to Fulltime in an amount not less than the \$991,000 that Fulltime paid to save the  
10 2016 fantasy football event and the amount of damage to the reputations of Fulltime and its  
11 principals.

12 137. Fulltime is entitled to damages in an amount to be proven at trial, plus treble  
13 damages up to \$25,000.00, interest, costs, and attorneys' fees. RCW 19.86.090.

#### 14 **SIXTH CAUSE OF ACTION**

##### 15 **Negligent Misrepresentation**

##### 16 **(Against Defendants Heckman, Stieglitz, Robinson, and Malitz)**

17 138. Fulltime realleges and incorporates the foregoing paragraphs as if fully set forth  
18 herein.

19 139. Defendants Heckman and Stieglitz supplied false information to Fulltime for the  
20 guidance of its business transactions by representing to Fulltime that Scout was worth between  
21 \$150 million and \$180 million and that it was a stable company positioned for growth.

22 140. Defendants Heckman and Stieglitz also omitted material facts that, by their  
23 omission, made these defendants' statements about Scout, its financial health, and its business  
plan misleading. The material facts omitted include that: (1) Scout had lost over \$6 million in  
cash from the 2013 financial statement that was provided; (2) Scout was at times insolvent; (3)  
Scout was in a perilous financial position; (4) Scout was shutting down its magazine and  
continuity businesses; and, (5) Scout's termination of its Minnesota employees had led to



1 massive issues with its CBO operations, including an over 2-month period during which Scout  
2 could neither send product to nor bill customers.

3 141. Fulltime justifiably relied on these material misrepresentations and omissions  
4 when it agreed to accept shares of Scout in exchange for ownership of Fulltime. Fulltime agreed  
5 to the transaction because its principals believed Scout was financially stable, had adequate  
6 cash reserves, had a steady stream of income from its magazine and continuity business, and  
7 had a long-term plan for growth. Even the number of Scout shares that Fulltime was supposed  
8 to receive under the APA was derived from the fraudulent valuation.

9 142. After the APA was signed and the purchase of Scout stock was allegedly  
10 complete, Defendants Heckman, Robinson, and Malitz supplied additional false information to  
11 Fulltime for the guidance of its business transactions by assuring Fulltime that the transfer of  
12 Scout stock was imminent, that Fulltime's owners were listed on Scout's capitalization table,  
13 and that they would "make it right," *i.e.*, make sure that Fulltime got the shares to which it was  
14 entitled. These statements were false because the stock was never actually transferred.

15 143. The defendants listed above knew of Fulltime's reliance and sought to influence  
16 Fulltime because they wanted Fulltime to remain under Scout's control, allowing Scout to  
17 continue using its revenues to fund Scout's operations.

18 144. As a direct and proximate result of the misrepresentations set forth herein,  
19 Fulltime has been damaged in an amount to be proven at trial.

## 20 SEVENTH CAUSE OF ACTION

### 21 Violation of the Uniform Fraudulent Transfer Act 22 (Against Defendants Heckman, Smith, Fahmy, Malitz, Lukasevitch, Robinson, and 23 Levinsohn)

145. Fulltime realleges and incorporates the foregoing paragraphs as if fully set forth  
herein.

146. Defendants Heckman, Smith, Fahmy, Malitz, Lukasevitch, Robinson, and  
Levinsohn were required to maintain and segregate fantasy contestants' prize funds from



1 Scout's general accounts under NY Statute § 1404(1)(l) and equitable principles of constructive  
2 trust.

3 147. The contestants in the 2016 Main Event are creditors within the meaning of  
4 RCW 19.40.011 because they had a claim to the prize fund monies.

5 148. Fulltime is equitably subrogated into the position of the 2016 Main Event  
6 contestants because it paid out all claims under the prize fund and has now stepped into the  
7 contestants' shoes for purposes of their claims against Scout.

8 149. Defendants Heckman, Smith, Fahmy, Malitz, Lukasevitch, Robinson, and  
9 Levinsohn knew the funds were required to be left untouched in the prize fund account, as  
10 evidenced by their earlier attempts to keep the prize fund segregated and by their conversations  
11 during summer of 2016 about the New York law's application to their business.

12 150. Rather than honoring the limitations on the use of the funds, Heckman, Smith,  
13 Fahmy, Malitz, Lukasevitch, Robinson, and Levinsohn, in their roles as officers and directors  
14 of Scout, fraudulently transferred the funds to themselves in the form of salaries (in the case of  
15 defendants Heckman, Smith, and Levinsohn) and used the funds to pay Scout's general business  
16 expenses in an effort to maintain value in Scout and obtain a return on their investments.

17 151. Defendants Heckman, Smith, Fahmy, Malitz, Lukasevitch, Robinson, and  
18 Levinsohn made the transfers with the intent to delay, hinder, or defraud the fantasy contestants.

19 152. Defendants Heckman, Smith, and Levinsohn accepted the funds as transferees  
20 with knowledge of the facts and circumstances of the fraudulent transfer.

21 153. Pursuant to RCW 19.40.071 and RCW 19.40.081(2)(a), Fulltime is entitled to  
22 judgment in an amount to be determined at trial that is no less than the \$921,000.00 fraudulently  
23 transferred out of the prize fund by Defendants.

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**EIGHTH CAUSE OF ACTION**

**Conversion**

**(Against Defendants Heckman, Smith, Fahmy, Malitz, Lukasevitch, Robinson, and Levinsohn)**

154. Fulltime realleges and incorporates the foregoing paragraphs as if fully set forth herein.

155. Defendants Heckman, Smith, Fahmy, Malitz, Lukasevitch, Robinson, and Levinsohn were required to maintain and segregate fantasy contestants' prize funds from Scout's general accounts under NY Statute § 1404(1)(l) and equitable principles of constructive trust.

156. Fulltime is equitably subrogated into the position of the fantasy contestants because it paid out all claims to contestants under the prize fund and has stepped into the contestants' shoes for purposes of their claims against Scout.

157. Defendants Heckman, Smith, Fahmy, Malitz, Lukasevitch, Robinson, and Levinsohn knew the funds were required to be left untouched in the prize fund account, as evidenced by their earlier attempts to keep the prize fund segregated and by their conversations during summer of 2016 about how the New York law applied to their business.

158. Rather than honoring the limitations on the use of the funds, Heckman, Smith, Fahmy, Malitz, Lukasevitch, Robinson, and Levinsohn, in their roles as officers and directors of Scout, wrongfully deprived the contestants of the prize funds by transferring the funds to themselves in the form of salaries (in the case of defendants Heckman, Smith, and Levinsohn) and using the funds to pay Scout's general business expenses in an effort to maintain value in Scout and obtain a return on their investments. In so transferring the funds, the aforementioned defendants willfully interfered with the contestants' right to possession of the funds.

159. Defendants Heckman, Smith, Fahmy, Malitz, Lukasevitch, Robinson, and Levinsohn are subject to personal liability for the funds converted to Scout's use because they were corporate officers who participated in and/or with knowledge approved of the conduct.



1 160. Defendants Heckman, Smith, Fahmy, Malitz, Lukasevitch, Robinson, and  
2 Levinsohn's unlawful conversion of the prize funds proximately and actually caused damages  
3 to Fulltime Fantasy in an amount to be proven at trial.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for relief against all Defendants as follows:

- 6 1. Judgment, jointly and severally against the Defendants, in an amount to be  
7 proven at trial, as a result of the Defendants' violations of the Washington State Securities Act,  
8 Securities and Exchange Act of 1934, Washington Consumer Protection Act, Uniform  
9 Fraudulent Transfer Act, and common law torts of negligent misrepresentation and conversion;  
10 2. An award of treble damages under the Washington Consumer Protection Act;  
11 3. An award to Plaintiff for its costs, interest, and attorneys' fees to the full extent  
12 allowed by law, including RCW 21.20.430 and RCW 19.86.090; and  
13 4. Such other and further relief as the Court may deem just and equitable.

14 DATED this 24th day of October, 2017.

15 By



16 Gulliver A. Swenson, WSBA #35974  
17 *Attorneys for Plaintiffs*  
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**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the State of Washington that on this 24th day of October, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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*Counsel for Doug and Jane Doe Smith and Mark and Jane Doe Stieglitz*

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 24th day of October, 2017 at Seattle, Washington.



Angie Henderson, Legal Assistant

